UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
SABINE OIL & GAS CORPORATION	:	Case No. 15-11835
Debtors.	:	
_____	:	
	:	
SABINE OIL & GAS CORPORATION,	:	
Plaintiff,	:	
v.	:	Adv. Proc. No.
	:	15-01126-scc
WILMINGTON TRUST, N.A.	:	
Defendants.	:	
_____	:	

United States Bankruptcy Court
One Bowling Green
New York, NY 10004
January 12, 2016
10:01 AM - 11:40 AM

B E F O R E :
HON SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

ECRO OPERATOR: JEANELLE DAWES

HEARING re Adversary proceeding: 15-01126-scc Sabine Oil & Gas Corporation v. Wilmington Trust, N.A. Argument on Motion to Dismiss (Continued from 10/15/15).

HEARING re Doc #625 Application of the Official Committee of Unsecured Creditors of Sabine Oil & Gas Corporation, et al., for Entry of an Order Expanding the Scope of the Committee's Employment and Retention of Porter Hedges LLP.

HEARING re Doc #603 First Interim Fee Application of Deloitte & Touche LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Independent Auditor and Accounting Services Provider to the Debtors.

HEARING re Doc #605 First Interim Fee Application of Kirkland & Ellis LLP and Kirkland & Ellis International LLP, Attorneys for the Debtors.

HEARING re Doc #604 First Interim Fee Application of Lazard Freres and Co. LLC, as Investment Banker to the Debtors for Allowance of Compensation and Reimbursement of Expenses.

HEARING re Doc #628 First Interim Application of PricewaterhouseCoopers LLP, Tax Consultants to the Debtors, for Compensation for Services Rendered and Reimbursement of

Expenses.

HEARING re #607 First Interim Fee Application of Prime Clerk, LLC, Administrative Agent to the Debtors, for Services Rendered and Reimbursement of Expenses.

HEARING re Doc #618 First Interim Application of Berkeley Research Group, LLC for Compensation for Services Rendered and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors.

HEARING re Doc #624 First Application of Porter Hedges, LLP, as Texas and Oil and Gas Counsel for the Official Committee of Unsecured Creditors, for Allowance of Compensation and for the Reimbursement of Expenses.

HEARING re Doc #606 First Application of Ropes & Gray LLP, as Counsel for the Official Committee of Unsecured Creditors, for Allowance of Compensation and for the Reimbursement of Expenses

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

KIRKLAND & ELLIS, LLP
Attorney for the Debtors
300 North LaSalle
Chicago, IL 60654

BY: JONATHAN S. HENES, P.C.
GABOR BALASSA

ROPES & GRAY
Attorney for the Official Committee of Unsecured Creditors
1211 Avenue of the Americas
New York, NY 10036-8704

BY: KRISTINA K. ALEXANDER
D. ROSS MARTIN
ANDREW G. DEVORE

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
Attorneys for Wilmington Trust, N.A.
1285 Avenue of the Americas
New York, NY 10019

BY: KELLIE A. CAIRNS
MOSES SILVERMAN
KYLE KIMPLER

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorney for the Bank of New York
One Bryant Park
New York, NY 10036-6745

BY: DANIEL H. GOLDEN

LINKLATERS LLP
Attorneys for Wells Fargo
1345 Avenue of the Americas
New York, NY 10105

BY: MARGOT B. SCHONHOLTZ

BROWN RUDNICK

Attorney for the Ad Hoc Committee of Forest Oil Noteholders & Forest Oil Noteholders Trustees

7 Times Square

New York, NY 10036

BY: DANIEL J. SAVAL

ALSO PRESENT TELEPHONICALLY:

ZELIJKA BOSNER

TRENT BRENDON

JOEL BRIGHTON

HAL CANDLAND

SCHUYLER CARROLL

JILL DINERMAN

DAVID M. DUNN

SHARI DWOSKIN

DAVID M. EPSTEIN

JOSEPH FEIL

ANNELYSE GIBBONS

STEPHANIE HARRELL

BRIAN HERMANN

JOHN F. HIGGINS

JASON HOMLER

SANDI HORWITZ

DAVID KOENIG
AARON M. KRIEGER
LUIS J. LANDAS
BRENDAN J. LANE
DAVID LUKKES
MICHAEL MARCZAK
DIANE MEYERS
JEFFREY S. MUNOZ
MATTHEW OCKWOOD
IAN T. PECK
DEBORAH M. PERRY
JEFFREY ROTHELDER
MATTHEW S. RYDER
JONATHAN SATRAN
JASON B. SANJANA
WARD SAVAGE
SAM STRINGER
JOSEPH TAEID
ANDREW M. THAU
RAY WALLANDER

P R O C E E D I N G S

THE COURT: Have a seat. How are you, Mr. Henes?

MR. HENES: I'm good, Your Honor. How are you?

THE COURT: Okay.

MR. HENES: Good morning, Your Honor. Jon Henes, Kirkland & Ellis on behalf of Sabine Oil & Gas. Your Honor, we only have two items on the agenda for today.

THE COURT: Right.

MR. HENES: One related to the motion to dismiss with respect to the claim brought by the company against the second lienholders. And the second being the fee applications.

THE COURT: Right.

MR. HENES: I'm actually confident that we called and I unfortunately have to leave at 11:00 today, and hopefully we'll be done by then, but I was hoping we could take the fee apps first --

THE COURT: Sure.

MR. HENES: -- which are -- there's no objections.

THE COURT: Right. So, a couple of things. So I understand that there -- all of the applications of the committee's professionals have been adjourned.

MR. HENES: That's correct.

THE COURT: And there were an exchange of letters or pleadings between Wells Fargo and the committee, right?

There was limited objection and then there was a preliminary response and to be continued?

MR. HENES: To be continued.

THE COURT: Okay. To be continued. All right. So we're not going to do that. Then there was also -- there was committee's application to expand the scope of Porter Hedges --

MR. HENES: Correct.

THE COURT: -- right? That's on for today?

MR. HENES: Yes, Your Honor

THE COURT: All right. So -- and no one has an objection to that?

MR. HENES: No.

THE COURT: Right?

MR. HENES: Yes.

THE COURT: Does anyone wish to be heard with respect to the committee's application to extend -- expand the scope of the committee's employment and retention of Porter Hedges? Okay. So that's going to be entered.

Then with respect to Kirkland's application, is anyone here from the Office of the U.S. Trustee?

MR. HENES: Mr. Schwartzberg.

THE COURT: Mr. Schwartzberg in his customary seat.

MR. SWARTZBERG: I think I moved up one, Your

Honor.

THE COURT: You moved up one? Great. Well by the end of the game you'll be in the front row.

MR. HENES: He's welcome any time.

THE COURT: He is welcome any time.

MR. HENES: He is welcome.

THE COURT: Right. So there was this curious thing, you filed a supplemental application.

MR. HENES: We did.

THE COURT: Could you give me a little bit more color about this Q&A thing?

MR. HENES: Sure. The -- Mr. Schwartzberg reached out to us with a number of questions --

THE COURT: Right.

MR. HENES: -- and had asked us if we would work with him and work with the U.S. Trustee's Office to get them answers and to file a supplement. With respect to the Q&A specifically, we had said that we had already answered those questions, just in a different place in my declaration. But the U.S. Trustee's Office requested that we do it in Q&A form, and so we decided that it was not -- that we would do that. That's as simple as it is.

THE COURT: Mr. Schwartzberg, why don't you come a little closer. How are you?

MR. SWARTZBERG: Good.

THE COURT: Happy New Year.

MR. SWARTZBERG: Thank you.

THE COURT: Can you shed any light on why this was necessary?

MR. SWARTZBERG: What -- the entire supplement or the Q&A one?

THE COURT: The Q&A format. I mean I don't want to make a mountain out of a mole hill, but --

MR. SWARTZBERG: I guess I have two responses, one I had trouble finding those answers so I said, are they there. And then I -- without looking, could you just do the -- answer the question -- put the question and the answer, just to make it easier to find, rather than parse through the application in different areas, just for ease.

And second, which sort of just a format that we've used in numerous other cases in the Southern District. We thought it would be easier to continue with that format.

THE COURT: Okay. I'm just not a big fan of extra work for no real benefit. So to the extent that as Mr. Henes indicates, that the same information was contained in his declaration --

MR. SWARTZBERG: The only thing I could supplement to that, Your Honor, is because we had some other questions that we asked for the declaration, that's why we asked, oh, can you -- while you're doing it, could you put it in this

format.

For instance, in Sbarro, the firm filed a fee application, did not use the Q&A format, but we had no other questions. Didn't make them just change it for the Q&A, I figured while they were filing a supplement, if we could do something that conforms to what we sort of wanted, and they were not hesitant to do that, that was fine. But it wasn't just solely for that, it was primarily for the other parts of the supplement that happened to be the first thing in the supplement.

THE COURT: Okay. Well we can let it go, but I'm just not a big fan of extra work for no benefit to the estate, so we'll leave it at that.

MR. SWARTZBERG: Well, as I said, Your Honor, I would not have brought it up had it not been together. It's just that --

THE COURT: Okay. Is there anything else that your office has to say about the fee application?

MR. SWARTZBERG: Nothing, Your Honor.

THE COURT: Okay. All right. Thank you, Mr. Schwartzberg.

All right. Back to you, Mr. Henes.

MR. HENES: Yes. So Your Honor, the -- other than the committee's fee application that's being adjourned, there were no objection to any of the other fee

applications. Unless you have questions for Kirkland on ours or anyone else's, we would just ask for them to be approved.

THE COURT: All right. Does anyone else wish to be heard with respect to the other fee applications that are before the Court for interim approval today?

All right. Very well. So just have someone submit an order to us, Mr. Henes.

MR. HENES: Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. HENES: So Your Honor, the second item on the agenda relates to the motion to dismiss. As Your Honor knows, we've made our substantive arguments already --

THE COURT: Right.

MR. HENES: -- and so we're not looking to make any additional arguments. And I think for us it's just a simple matter of timing and whether the motion to dismiss should be ruled on now or not. And I can address that very quickly and then sit down --

THE COURT: Sure.

MR. HENES: -- and let others speak. You know, I think that one of the questions, and we've heard this question as we've been talking to all the different parties, is since the debtors have stated, and we have said this, that because of where gas prices have dropped, our view is

that there is no value to those liens anymore, that the second liens have on the collateral of the -- of legacy Forest assets, why not just withdraw the complaint, even if it's without prejudice. And I think that we have a couple of reasons for that.

One is we think a ruling would give us clarity. What we are doing right now, we, the debtors, is while the mediation is about to begin at the end of this month, and we had our initial session, which I think was a very productive session, with Judge Gropper, and while the STN motions are pending, we are continuing to push forward with a plan and we do intend to file a plan. Because we think getting a plan process moving forward will make sense, and we'll discuss that as well in the mediation.

And having some clarity on this issue would be helpful because, for instance, if you rule in our favor, and as a result the lawsuit would move on, then we would be sitting talking to the seconds about trying to settle it, most likely, rather than continue to prosecute it, although we would continue to move forward in prosecution.

Second, if you ruled against us, then that's a claim that we would be releasing under our plan as the debtor, because there would be no claim. So we think clarity is important.

Second, to the value perspective, when it comes to

remedies we've heard -- we've looked at a lot of different remedies, we've heard from the creditor's committee and have seen it and we think that even without the value today, there are potential remedies against the second lienholders, based on the lien they got at the time that they got it. So we don't think it's an irrelevant or moot point anymore.

But really, our view is we would like to get as much clarity as possible as we move forward in the plan process, and we think that this is part of it.

The last thing I would say is, both the creditors committee and the ad hoc committee of Forest noteholders have brought claims to avoid those same liens, at least they put them in their STN motions, so clearly their view is that those are real claims to be decided and we just think that deciding it now would -- again, would be helpful as we move forward in this process. We think that each issue that could be decided will help us.

That's all I have to say for right now, but we'll reserve our right.

THE COURT: Okay.

MR. HENES: Thank you, Your Honor.

THE COURT: All right. And just before you step down, just to be clear, we're having a pretrial conference tomorrow?

MR. HENES: Correct.

THE COURT: Correct?

MR. HENES: On the STNs.

MR. SILVERMAN: Correct.

MR. HENES: Yes, Your Honor.

THE COURT: On how we're going to conduct the STNs?

MR. HENES: Yes, we do. Yes.

THE COURT: Okay. All right. And that's been noticed on the docket?

MR. SILVERMAN: Yes.

THE COURT: All right. Thank you.

MR. HENES: Thank you.

THE COURT: Mr. Silverman, thank you for making -- reprising your earlier role. I appreciate it.

MR. SILVERMAN: Your Honor, we thought, though, that it made sense for the --

THE COURT: I think --

MR. SILVERMAN: -- committee to go first because --

THE COURT: I agree. Okay. All right, Mr. Martin.

MR. MARTIN: Your Honor, for the record, Ross Martin, Ropes & Gray for the official committee of unsecured creditors.

THE COURT: Well, also let me just take a moment

to note that I've got a couple dozen folks on the phone and they're all listening, (indiscernible) can only identify --

MR. MARTIN: Plaintiff intervener in this adversary proceeding as well. As Mr. Silverman noted, we conferred before the hearing and we're happy to go first since you heard from both him and the debtors several weeks ago. Given that this --

THE COURT: Wait. And just let me stop you. We did, I believe, enter the order on the intervention.

MR. MARTIN: That's correct.

THE COURT: Yes.

MR. MARTIN: I checked that, Your Honor.

THE COURT: Right. Okay.

MR. MARTIN: Yes. The -- since the second lien agent is being allowed to reply orally at the hearing, which makes perfect sense given the time line, I might want to say a few words, but I've, you know, reviewed the transcript and I want to try to bring this to a close rather than have six back and forths, and do this in a focused way, since there's already been argument and we have the benefit of not only the briefs, but as I said, that prior argument.

Obviously I'd be happy to answer questions the Court has. We filed a hopefully not too lengthy pleading that gives us our take on this.

But where I'd like to start, Your Honor, is by

observing that the committee believes, essentially, that the debtors and the second lien agent are talking past each other.

THE COURT: You're all talking past each other.

MR. MARTIN: Well, that may very well be on a larger scale. And that is a result of not focusing on what we think is a critical fact and some of what we think is very simple uncontested law. And the fact is this. That the debtors keep talking, in this adversary proceeding, about the liens, about the grant of the liens. But they also keep talking about the events of December 16th, 2014 when the transaction closed.

What causes the confusion, I -- in my view, is that the liens weren't granted on December 16th, the liens were granted, its undisputed, in February of 2015. Later. And what that does is it brings, as I was thinking about this, into sharp relief why the two parties disagree. The debtors are arguing about the right date, but the wrong thing. I mean we've made this, I think, pretty clear in our papers. At the closing of the merger, what occurred from the perspective of Forest Oil Corporation, sitting there, and New York Corporation at that time, was that all of a sudden it had many more obligations, including $700 million of second lien debt. And it doesn't --

THE COURT: Well, let me stop you, because this

is, I believe, incredibly complex. Okay? And right away we get to one of the issues, which is "it." You said "it had more obligations." And one of the fundamental problems is, or issues is who is "it."

MR. MARTIN: Okay. So that was exactly the --

THE COURT: Who is "it"?

MR. MARTIN: Okay.

THE COURT: Okay?

MR. MARTIN: So -- and I was -- my very next point was that there was a lot of discussion at the prior hearing about who is "it" --

THE COURT: Right.

MR. MARTIN: -- and the nomenclature issue. And I actually think that can be quite easily clarified, by focusing on Forest Oil, as it sat there the moment before the merger. Okay?

The merger, when it happened, was an incurrence of obligations, from the perspective of fraudulent conveyance law. I understand what it means as a matter of corporations law. Right? But fraudulent conveyance law is a separate body of law. And so we don't have to talk about legacy Forest combined company. Forest Oil is the parent debtor now.

THE COURT: Well it's the --

MR. MARTIN: So it has --

THE COURT: -- for the purposes of fraudulent conveyance law, isn't it -- does it lend clarity to say that it's the transferor?

MR. MARTIN: Yes. Or the way I would put that is, it's the party that incurred the obligation, same -- we're saying the same thing. Because you can either be -- you can either make a transfer or incur an obligation.

THE COURT: But let me try it this way, the way some -- I always like to try to put it in the simplest terms. So Forest sat down at the table, right?

MR. MARTIN: Mh hmm.

THE COURT: Pushed all of its assets and liabilities into the middle. Sabine sat down at the table, pushed all of its assets and liabilities into the middle. And then what did Forest get back? It got back 26 percent of the economic value of everything that was put on the table.

MR. MARTIN: We actually don't quite see it that way, Your Honor.

THE COURT: Okay.

MR. MARTIN: I see it in a simpler way. Forest is sitting there, and Sabine merges into it. Forest Oil is still the parent debtor. That entity that merged in, we should also make a distinction there's Sabine parent --

THE COURT: Right. Sabine --

MR. MARTIN: -- and Sabine subsidiaries.

THE COURT: Right.

MR. MARTIN: And it's Sabine parent that merged in, the subsidiaries are still hanging underneath.

When it merged in, there were -- there was a bunch of existing debt on the Sabine parent. And all of a sudden Forest was liable for that debt. That's, for fraudulent conveyance purposes, not a transfer, it's an incurrence of an obligation, which is just as avoidable as a transfer. Okay?

I don't see there being, on December 14th, with respect to the second liens, there's not a transfer, that's my point about the liens were granted later. They're also avoidable, because the obligation's avoidable. But from the second liens, I'll be perfectly clear, the committee does not think that there was a transfer. There was a fraudulent, avoidable incurrence of an obligation, because Sabine -- when Sabine parent came, it was a holding company. It had very few assets. The assets that the Sabine business had were -- the oil and gas fields rest at the subsidiaries, it was insolvent. The subsidiaries were insolvent, because of the debt that already sat on Sabine.

So when you say 26 percent of the economic value, the economic value that came in, as the Court was indicating, two sets of things came together. What came in?

A whole bunch of liabilities at Sabine parent, and the very few assets, maybe a headquarters lease --

THE COURT: Right.

MR. MARTIN: -- maybe a few other things, nothing close to 700 million plus the first lien that -- all of which was assumed in -- as -- in the merger, as a matter of fraudulent conveyance law.

And so that -- when you put the picture together for constructive fraudulent conveyance, Forest, sitting there, assumed the second lien debt, the first -- the old Sabine first lien debt, but even the second lien debt by itself, assumed $700 million of obligations and very, very few assets came with it from Sabine, because the stock of the subsidiaries was valueless. It was insolvent.

And that -- and so it's an incurrence. It's -- in the first instance it's the avoidance of the incurrence of an obligation, that's what you've heard people since the first day of the case, I wasn't here but I read the transcript, talk about claim avoidance in the first instance, not a transfer.

And that's why I wanted to start where I started because I think that the problem the committee has always had with the debtor's approach is by focusing on the lien, it focuses on, you know, what was the transfer and the question the Court --

THE COURT: But let me ask you --

MR. MARTIN: -- had, but that's not the question in the first instance.

THE COURT: But let me try to come at it a different way. You started by saying, let's focus on undisputed facts, right?

MR. MARTIN: Mh hmm.

THE COURT: There's no dispute that the second lien lenders provided value. They made the loans, right?

MR. MARTIN: To the old entity.

THE COURT: Yes. But they made the loans --

MR. MARTIN: That's correct.

THE COURT: -- right? So you're saying claim avoidance, you're saying no claim. No claim. But they lent the money.

MR. MARTIN: So --

THE COURT: -- right? And they, putting aside, you know, intent on their part or co-conspiracy or et cetera they lent the money to an entity, under, you know, various credit liens and then low and behold, they get dragged along into this transaction and now what you're saying is because, under fraudulent conveyance law there was not reasonably equivalent value, that's still what it --

MR. MARTIN: At --

THE COURT: -- comes back to, right? On --

MR. MARTIN: That's on --

THE COURT: -- December 16th?

MR. MARTIN: -- on the constructive claim, that's correct.

THE COURT: -- on the constructive claim, right--

MR. MARTIN: Right.

THE COURT: -- that the second lien lenders should have no claim for the money that they lent. Whereas I think what the debtor is trying to say is put the parties back to where they were before the liens were granted.

MR. MARTIN: Let me answer the question this way, because I don't characterize it that way. I'll tell you --

THE COURT: Okay.

MR. MARTIN: -- exactly what recourse we think they have.

THE COURT: Okay. Can I just ask Mr. Henes, if --

MR. HENES: Yeah.

THE COURT: -- fundamentally that's --

MR. HENES: It is fundamentally right. And I think I -- and I don't want to put words in Mr. Ross's (sic) mouth. Anyway, but I think what's -- because we thought about this a lot, too. It's almost -- it's a two estate, one estate thing almost. Because I don't think what Mr. Ross is saying is that the full second lien obligation should go away against --

MR. MARTIN: Correct.

MR. HENES: -- everybody. He's saying against the Forest estate. We don't look at the -- we look at one combine company --

THE COURT: Right.

MR. HENES: -- that's how we're looking at it. So we're saying that that claim can't go away, because there's one estate and they did loan the money and so they have that claim.

I think what Mr. Martin is saying is, no, let's look at it as two estates. Against Forest -- no? Okay. Then I don't --

MR. MARTIN: Let me --

THE COURT: Okay.

MR. HENES: -- then I don't understand.

MR. MARTIN: I know exactly --

THE COURT: All right.

MR. MARTIN: -- how we -- we've thought long and hard about this, and let me just answer the Court's question directly.

THE COURT: I mean you have to all admit, we can agree on one thing, it is fascinating that --

MR. MARTIN: Yes. So let me start with this.

THE COURT: -- that we're all having such trouble with this.

MR. MARTIN: No, but let me start with this. We are not saying that the, at least the 650 million which had been previously loaned, there was a $50 million bump up --

THE COURT: Right.

MR. MARTIN: -- set that aside.

THE COURT: Right.

MR. MARTIN: We are not saying that the 650 million, at the subsidiary level where the assets are, the assets they loaned against, where -- that's not the cause of action we're here talking about today. The only action here today is the one brought by the debtors by the parent debtor.

So in terms of, are we just eliminating their claim and they're gone from the case? The answer is, no. They actually have recourse, secured recourse to the assets that they had, as the Court said, that they loaned on at the subsidiary level. So that's point one.

At the parent level, this is how I think the statute works by its plain terms. The obligation is avoidable in the first instance, to the extent that value came in, okay, in that merger, at the parent level. So let's talk about what miscellaneous assets there might have been at the parent company. Maybe there's a headquarters building, headquarters lease, there were swaps that were in the money to the company, not insignificant value, actually,

at the time, tens of millions of dollars, and there may be other assets. Those assets that came in in the merger, in our view, as we set forth in STN papers, assuming everyone's in good faith, get credited.

So if you think about it this way, prior to the merger, what recourse would the second liens have had? They would have had recourse at the subsidiary level and they would have had recourse at the Sabine parent level, the assets of the Sabine parent. And what 548(c) gives them is exactly that recourse.

So we're not saying we're wiping out the claim at the parent, we're saying it's claim avoidance and they get, by virtue of 548(c), to keep for the value that came in that they would have had recourse to. That's how the statute works. It actually produces exactly the results of if you pull them apart, but you can't. The Court -- I don't -- doesn't have the power to create two estates.

THE COURT: Right.

MR. MARTIN: But it is not the case that --

THE COURT: But doesn't what you just said reflect that you and Mr. Henes are, in substance, saying the same thing? And I'm trying to bridge the difference, intellectually, between your characterization of this as claim avoidance and the debtor's characterization of this as lien avoidance. And I think that the clarification that you

just made does that.

MR. MARTIN: Right. Let me -- this is why I started where I did with the two different dates. This is exactly why I started there.

THE COURT: Okay.

MR. MARTIN: Because if you don't deal with what happened on the 16th, with the claim avoidance, if you look at it as they have framed the complaint, a transfer of liens which occurred in February, later, in a sense the second lien agent is correct. Two months later, it's an obligation of the combined entity, and they granted a lien. It was unsecured for two months, they granted a lien, there was more than 90 days before the case filed.

THE COURT: Right.

MR. MARTIN: It feels, in the words of the Court, in the transcript that I read --

THE COURT: Preferency. Preference. Right.

MR. MARTIN: What -- and that's where our disagreement with the debtors lies, because to our mind, if the complaint frankly is only brought the way its brought, it may have a problem, upstairs, wherever, because what makes the liens avoidable, whether the liens were granted frankly two months later or on the 16th, what makes them avoidable is that the lien -- because they're right about the antecedent debt rule exists. We're not -- we don't

dispute that.

THE COURT: Right.

MR. MARTIN: But it doesn't exist when the underlying obligation is avoidable. And that's why we start the analysis. We actually don't end up, I think, in a different place, but it --

THE COURT: That's what I --

MR. MARTIN: -- matters --

THE COURT: -- that's what I was trying to say.

MR. MARTIN: -- for the justification of it.

THE COURT: So you say that -- there's a lot of talk about red herrings, but fundamentally you could also get to where you want to go by collapsing, right?

MR. MARTIN: I don't think so. And that's why I wrote that for a reason. Because -- and we're not here today on this. We think the collapsing doctrine is relevant to other causes of action that we've asserted and we'll be talking about that in February.

But the collapsing doctrine does something different. The collapsing doctrine is very specific for when you have a loan made, money coming in, lien going out. So if you just look at that, it looks like reasonably equivalent value. But then the money goes somewhere else. That's what the collapsing doctrine is about. It's not a generalized doctrine, and it's not -- I just think it's the

wrong doctrine here. And again --

THE COURT: But --

MR. MARTIN: -- there's a lot of money at stake and so we --

THE COURT: Right.

MR. MARTIN: -- want to make sure we have this right.

THE COURT: But the best authority that you've given me is Hechinger.

MR. MARTIN: No, the best authority, I think is Adelphia. And I can point the Court to exactly where I'm talking -- all right, excuse me, Allegheny. And I can point you exactly to where I'm talking about.

THE COURT: Allegheny's a really bizarre case. I mean let's -- with all due respect, I mean --

MR. HENES: I saw the Court's remarks on that and I spent a bit of time -- and again, if the Court would indulge me for a minute --

THE COURT: Sure.

MR. HENES: -- if I can try to simplify it?

THE COURT: Sure.

MR. HENES: Because I want to talk about two pieces about Allegheny. What makes Allegheny bizarre is that it -- it was two things. First of all, it analyzed six different transfers, and thankfully it lays them out quite

crisply at Pages 161 to 162 of the opinion and then goes through each one methodically.

What also is bizarre about it is that the plaintiff in that case sued a separate entity for the benefit of.

THE COURT: Right.

MR. MARTIN: Okay.

THE COURT: Okay.

MR. MARTIN: So the way I think about that case is set aside all the stuff about for the benefit of and focus on the Court's analysis with respect to what was and was not an incurrence of an obligation or a transfer. And I would direct the Court very specifically to Page 167 of that opinion, which is however the discussion of the very first transaction that the Court examined.

The very first transaction the Court examined was when the so-called PHCT subsidiaries merged into the debtor.

THE COURT: Right.

MR. MARTIN: Okay? And the plaintiff sued PHCT and there's a lengthy discussion about can you sue PHCT for the benefit of. But the very first thing that the Court says in that discussion, in once -- one noncontroversial sentence, is that the merger affected an incurrence of the obligations.

THE COURT: Right. Because Centennial absorbed

the pre-existing liabilities --

MR. MARTIN: Right.

THE COURT: -- of the PHCT subsidiaries, via the merger there cannot be any doubt, and the Court does not disagree with the trustee, that Centennial --

MR. MARTIN: Right.

THE COURT: -- thereby incurred the obligation.

MR. MARTIN: That's the single sentence in that whole section, and frankly that whole opinion, that is relevant to this question. And it says it in an uncontroversial way. I mean we can have an argument about it's not -- you know, it's only another bankruptcy court and we can all those arguments. But the Court thought it so noncontroversial that it moved on to a very difficult question about for the benefit.

We don't have for the benefit here. We just have the first sentence. And it stands squarely for the proposition the way that I argued it here today.

Now, if I could --

THE COURT: But now I'm confused, because what you quoted to me is Footnote 7, which is that -- which is the sorting of the creditors footnote. PHCT appears to argue that the pre-existing creditors of the PHCT subsidiaries, blah, blah, blah. In particular the Court, contrary to the view of PHCT, concludes that if said creditors could have

reached PHCT prior to the merger, then the extinguishment of PHCT's liability with respect to their claims would have harmed said creditors by adversely affecting their financial predicament, to wit, removing from said creditors an avenue by which their claims could be satisfied.

MR. MARTIN: That, to me is a separate question of the recourse to PHCT. I'm very -- I'm literally focused on the first question. I -- the Allegheny case is confusing and got confused because they're suing PHCT. The -- this -- and this is one of the reasons we've been very focused on, what is the technically correct avenue under the statute. It's relevant here and it's going to be relevant more in February.

The question -- or the way the fraudulent conveyance statutes, state and federal, get at this issue is that for fraudulent conveyance purposes, that entity incurred those obligations for the first time when that happened. I understand that for corporate purposes it looks back, and I get all of that. But just like an involuntary transfer can be -- or an involuntary incurrence of obligations can be a fraudulent transfer, just like something that is permitted by contract can be a fraudulent transfer, the purpose of fraudulent transfer law is to look at it from the creditor perspective, and there's no question that all of a sudden there were -- just looking at the

second liens, there was at $700 million of additional liability on that day.

Now if I could, Your Honor, I wanted to focus on, again in the interest of not having to stand up too often. One of the things that Mr. Silverman talked about in the prior hearing was that there's a section of Allegheny that does talk about the antecedent debt rule. And he pointed to that as -- I -- and I'm sure I won't exactly quote his words, but as an example of where the antecedent debt rule was recognized, you know, to span a merger or in connection with a merger.

And this is where I think it's very important to focus on the fact that Allegheny looked at five separate transactions. And the one he referred to there I believe is the fifth, if I have it correctly. And it's covered on Pages 171 to 172. And it's a very different transaction.

PHCT had subsidiaries and they had a bunch of intercompany debt between them. And what the trustee attacked was the forgiveness of the intercompany debt by -- that was owed by the parent to the subs. And the Court made a very simple observation that there was at least as much if in fact there was more, there was three and a half million dollars or so in excess of debt that ran the other way. And so all that was happening was that when that intercompany debt was released at the time of the merger, it was paying

off the debt that subsidiaries owed to PHCT.

The debt -- that debt was in between two companies that already existed. So there's a very simple analogy to this case, to our case. If the analogous transaction in our case would have been, if Sabine and its subsidiaries had had a bunch of intercompanies between them, and they trued them up, and then they merged, we couldn't cherry pick one side of that; it would be payment of antecedent debt. It's a different transaction than the one that is discussed in the -- the first transaction that's discussed and that the Court had no problem concluding in one sentence, was avoidable incurrence of obligations, before it turned to the more difficult benefit point.

I wanted to address this because I knew Mr. Silverman brought it up and I thought let's get it out on the table. There are two -- when he refers to that, the use of the antecedent debt rule, to put it simply, in Allegheny, is about a completely different transaction than the incurrence of obligations in the merger. It's about the separate settling up between two other entities of intercompany claim.

THE COURT: Well -- okay, I don't know that that's that controversial, but there's other stuff in this opinion that is I think a little curious.

MR. MARTIN: Okay.

THE COURT: So if you look at -- it's in Roman I, in the context of the issue of whether the trustee is precluded from proceeding under the Pennsylvania statute for lack of standing. It says, the resolution of which turns upon whether Centennial lacked creditors, prior to any of the alleged conveyances.

And what this speaks to is all the arguments that I've seen related to -- from the perspective of the creditors. It's been urged that I should look at the fraudulent conveyance from the perspective of the creditors, and I think there were a number of cases that were cited, perhaps in the Third and Fourth Circuit --

MR. MARTIN: Mh hmm.

THE COURT: -- not in the Second Circuit. But then if you look at what the Allegheny court did, and this is around Page 165, it declines to pin down the precise dates of the alleged conveyances, given that the alleged conveyances occurred prior to the date of the merger. And it says, concludes that the claims of the creditors of the PHCT subsidiaries which were incurred prior to the date of the merger, also constitute, because of the merger, claims against Centennial which are deemed to have arisen against Centennial prior to the date of the merger --

MR. MARTIN: Mh hmm.

THE COURT: -- and can thus conclude that

Centennial possessed creditors.

So how do you deem -- I mean that's --

MR. MARTIN: It --

THE COURT: -- really pretty cool, right?

MR. MARTIN: Right. In part, Your Honor, that's dealing with a separate problem. And it's dealing with the problem --

THE COURT: But you don't want to be deemed --

MR. MARTIN: We --

THE COURT: -- you don't want everybody to be deemed creditors --

MR. MARTIN: No. And we don't have to.

THE COURT: -- of everybody -- no, but if -- what I'm saying is that I guess you're telling me that Allegheny is my case --

MR. MARTIN: Mh hmm.

THE COURT: -- then you really don't want me to do that.

MR. MARTIN: No. And --

THE COURT: Because that doesn't do much for you.

MR. MARTIN: -- and let me say --

THE COURT: So --

MR. MARTIN: -- well, but let me offer the following, because I don't think the Court needs to do that, and I can explain, for several reasons, why. First --

THE COURT: But I'm -- I mean if I'm going to be intellectually consistent, right, then I'm either going to follow a case or I'm not going to follow a case.

MR. MARTIN: Oh, and I think you can be intellectually consistent and do both. So the purpose of that --

THE COURT: But then we're all -- but then there's no Forest and there -- then you're all just creditors, and from the perspective of the post-merger estate, you're all just creditors. Whereas what you're saying -- the essence of what you're saying is that the legacy Forest creditors are -- were worse off after the merger, and that's the problem.

MR. MARTIN: That --

THE COURT: And so you don't want me to deem the legacy Forest creditors --

MR. MARTIN: The Legacy Sabines.

THE COURT: Forest.

MR. MARTIN: Okay.

THE COURT: Because every -- it's all Forest.

MR. MARTIN: Can I take a try at this?

THE COURT: Sure.

MR. MARTIN: Okay. So what that section of the Allegheny opinion is dealing with is a separate problem, separate issue, separate requirement than the is there a

transfer for an incurrence of obligation and is there a reasonably equivalent value. Those are completely separate things. And it's dealing with the fact that the incurrence of the obligation in Allegheny occurred more than, at that time, well, more than one year prior to. So they had to prove, under 544, the existence of a creditor. Okay?

THE COURT: Mh hmm.

MR. MARTIN: And so first of all, those are two separate tests. Okay. The test of whether there's reasonably equivalent value, which is the only -- there's only two -- for the substantive liability, I think there's -- let me say, first of all, there's two ways to look at this.

First of all, for the substantive liability there's only two tests, and this gets at your from the creditor perspective.

THE COURT: Mh hmm.

MR. MARTIN: From the creditor perspective really isn't part of those tests, it's one is it insolvent on any one of three tests --

THE COURT: Right.

MR. MARTIN: -- and did the estate get reasonably equivalent value and that's where the from the perspective of creditors. But all that is saying is, you know, were there more liabilities or fewer assets, depending on whether

it's an obligation or a transfer case.

There's a separate requirement in 544, as we all know, for an actual creditor and so the Allegheny court was confronting the question of was there an actual creditor. And it appears that they were suing on the grounds of insolvency, not unreasonably small capital and the other tests, which you can -- can use future creditors, right?

So they had to have a pre-transaction creditor. Now remember, under the bankruptcy code, as soon as you find one, under Moore v. Bay --

THE COURT: Right, you're good.

MR. MARTIN: -- you get the whole thing.

THE COURT: Right.

MR. MARTIN: So it's really the different test. That's my first -- it's -- you can be completely intellectually consistent, because they're being used for different purposes. But let me set that aside, because you can -- in our case, you don't even have to get into that, because it's a 548 case. It's within two years, it would have been -- within one year, even under the old statute, so that issue doesn't even arise with respect to 548. The Court doesn't have to I think confront that, on the second.

I think it's intellectually consistent because I think for one purpose it's just a question of is Moore v. Bay triggers, in effect and that's a different question than

the, is there reasonably equivalent value. And Moore v. Bay itself demonstrates that, you don't do it on a creditor by creditor basis, but I don't think the Court has to confront that because this is a 548 case.

THE COURT: But you -- but the sentence that you directed my attention to, the incurred the obligations, are you backing away from the concept of transfer, because of the 546(e)?

MR. MARTIN: No.

THE COURT: The specter of 546(e)?

MR. MARTIN: No.

THE COURT: Because under my hypothetical, the everybody pushing all their stuff into the middle of the table and then Forest taking back 26 percent of the economic value, right --

MR. MARTIN: Mh hmm. Which was zero in the -- at the parent level.

THE COURT: Well, but that -- but then happy day for your fraudulent conveyance --

MR. MARTIN: Mh hmm.

THE COURT: -- case, because if that's true then, right, putting everything else aside, then it got zero for what it pushed into the middle of the table, right? Because it -- right? I mean yes, it incurred obligations but that's baked into the value that it got. It got some assets but it

incurred a lot of obligations, and that's what makes the value be non-existent.

MR. MARTIN: If this had been a -- Your Honor, I'll be a little bit sort of brutally honest as a bankruptcy lawyer. If this all ends up on whatever formulation, happy day for my fraudulent conveyance claim, that's fine with us. But to be intellectually rigorous about it, in our view, if you had these two entities, and they had merged into a third, which you can do, as a matter of corporate law, that would be the example you gave of pushing the chips and liabilities all into one place. But that's not what occurred. You have four sitting there, and as a matter of corporate law, it's clear what happened. Sabine parent moved into it, and Forest Oil is the one that's still sitting there. And so to us, it has always seen that that's conceptualized not as a transfer but as, in the first instance, the incurrence of the obligation of Legacy Sabine, did Legacy Sabine's parent reasonably equivalent value in terms of its assets at the parent level to the table, and it did not.

THE COURT: Well, it's as if -- then you're saying call it an acquisition, right? Call it an acquisition that Forest paid for, right? And didn't get reasonably equivalent value for, right?

MR. MARTIN: In a sense, yes, but the pay for,

stills to me feels like a transfer. And so I'm not meaning to be difficult, but the -- we all start, whenever we talk colloquially about the fraudulent conveyance law, we all talk about if the physician committed malpractice, and they go and they transfer the home, and we think about this transfer, it's often called fraudulent transfer law, and I think many of us have been trying to use fraudulent conveyance law, precisely to not have that on it.

THE COURT: Sure. Right.

MR. MARTIN: And this really is, at its core, again, solvent corporations don't merge all that often, so it's true this doesn't come up. But it really is, when we thought about this, that's conceptualized as incurrence of an obligation with those creditors who came in, if they qualify, getting credit under 548(c). So we're not trying to wipe out their -- the recourse would stay the same, as long as they qualify for 548(c).

And as I said, to the Court's point, we're just trying to wipe out their claims for the money good, they'll still have the claims down at the subsidiaries, where those assets are. So it's not a windfall-ish result, in that respect. And that seems to us to be the cleanest way, straight under the statute, the way it works. And it does get to the economic result that people speak out colloquially, that the Sabine side will have recourse to the

assets they had before, the Forest estate, a parent company state, now Sabine Oil and Gas Corp will not have -- they'll have a lien under 548(c), they'll have recourse to some specific assets. The remaining creditors will be those of Forest with those assets, as they sat there. And that produces exactly the result under the statute that we think is there. I've been up here for a while, if I could just say two more things very briefly.

THE COURT: Sure.

MR. MARTIN: Unless the Court wants to hear, I won't go over 548(c).

THE COURT: I don't want to hear it, yep.

MR. MARTIN: That was the sense I had. Lastly, as to the precise procedural posture we're in, and I think we covered this in our papers, our view is that -- and I think the Second Circuit law that we found backs us up on this -- is the fact that the Debtors have pled it as only lien avoidance doesn't make a difference, because we think that there are sufficient allegations in the complaint, specifically that the second lien existed, and that there was a merger, and that to us pleads the occurrence, so that the complaint could survive.

The committee, I think, hopefully made this clear. I think that if the Court felt that a dismissal, without prejudice, and then we decide what we're going to do after

the STN motion, that seems to us to be an equivalent result of raising the issue, so either way, there's no question that the Debtor didn't argue it particularly this way, that's the colloquy we had this morning. We do think under Chief Judge Walker's opinion, and sign attended, you can do this. He went though, in that case, a number of alternative theories, but I do understand -- we've pointed to very specific allegations, and there aren't a lot. All I'm saying is I understand this, there are two paragraphs.

THE COURT: I understand your point. Right. Saying allegations, but under different legal ruling, okay.

MR. MARTIN: Under a different legal ruling. That's all I have, Your Honor.

THE COURT: All right. Looks like Mr. Henes wants to say something before he leaves.

MR. HENES: Yeah, just very briefly, Your Honor, because I think I understand what Mr. Martin's saying. No, I do, and I just want us to simplify this. I think he is saying, and it's what I stood up to say before is, so if you look up at the holding company level, right? And so you say, "Okay, so the second lien holders do have some claim, but it's a $650 million claim minus a lot, because the only claim is the amount of value that Sabine transferred to Forest. So let's say that was her argument, say $20 million. So they have a $20 million claim up against the

parent, and a $650 claim against everybody else. So it is looking at it as two estates, right, which is not what we were doing. We were looking at it as, this is one merger, in my case, set in Allegheny, those creditors already existed at the time that they made the loans. That's the way that we looked at it, and it's one estate.

The reason that we said you can avoid the liens is because while that claim existed, and they did have liens on the assets of Sabine, when the companies came together, they then got a lien because of the merger against assets they didn't have. So we're saying no, get rid of that lien. So I think that that's really the disagreement. It doesn't mean we couldn't ever formulate a plan where we do kind of cerate claims against the Forest entity, and claims against the Sabine entities. I'm not sure whether that's going to --

THE COURT: So then, in fact, in economic substance, you are saying the same thing.

MR. HENES: I think it's similar.

THE COURT: You, meaning you and the committee are saying the same thing?

MR. HENES: In economic substance, I think it is similar. It's not going to be (indiscernible), where values are now, it's definitely the same thing.

THE COURT: Now, putting aside where values are

now issued, because --

MR. HENES: Well, our view is that the second lien holders have a $650 million -- I see what you're saying -- they have a $650 secured claim against the Legacy Sabine assets, and they have a $650 million claim, but that claim doesn't include a secure claim against any of those Forest assets. That's what we're saying. So you're carving out the Forest assets from the secure claim. They still have a $650 million claim against the whole entity.

THE COURT: But the Forest noteholders are restored to having recourse to the pre-merger Forest assets? Or that the Forest unsecured creditors are restored to the position they were in prior to the granting of the lien.

MR. HENES: Well our view, yeah, sort of. I mean, now there's no lien on those assets.

THE COURT: Right.

MR. HENES: Other than the (indiscernible) lien, right? Let's put that aside. There's no second lien against those assets anymore, so the second lien holders, to the extent that they -- their claim there would be unsecured, that portion of their claim.

THE COURT: Right.

MR. HENES: That's what we're saying. But we're looking at it as one estate. And so it may come out, the math may come out the same way, but we're not looking at it

as two estates. If we do it the way that, what Mr. Martin is saying, is you're not going to have a $650 million claim by the second lien holder, at the parent level, which is where all of the legacy Forest assets reside, and continue to reside. So their claim would be smaller. So you would have a plan, it would say, "Okay, the Forest noteholders have their full claim against the --"

THE COURT: Now, how could you be advocating a remedy that doesn't fully restore the Forest unsecureds to where they were before the granting of the lien?

MR. HENES: Well, okay. Thank you, Danny.

THE COURT: Was that Danny? You're standing square. Unless you've purposely picked that seat so that I couldn't see him.

MR. HENES: When I walked in (indiscernible)

THE COURT: Can I order him to move over?

MR. HENES: I think that -- because our view is this. Our view is that the $650 million obligation, right, was incurred when it was incurred. There was a merger. And so as part of that merger, it's as if that $650 million claim already existed against the full company, because we look at this as one estate of value, right? And what we don't think was right was the lien that was granted onto the Forest assets at that time, because that was something new. So that's what we're trying to avoid, okay? That Mr. Golden

asks a good question, I think if we went the other way of restoring everybody, I'm not sure that that ends up being good for Mr. Golden's Sabine creditor clients.

But we could, at the end of the day, depending on how you rule, we can construct the plan either way, to get that on file, and move it forward. It's just this is what -- our view is that $650 million, (indiscernible) the merger, existed against all the entities. You couldn't have claim avoidance, but you could have lien avoidance, and I think that that's just the critical question. And if Mr. Martin's right, then you will have two estates. You'll have a holding company estate, and you have a subsidiary estate, which we could do.

THE COURT: What is -- and I know you have to leave --

MR. HENES: I apologize, Your Honor.

THE COURT: What is -- I'm trying to remember the end of the Williams Report. He concludes that, may likely -- said the Debtor in possession may likely not prevail on any remedies seeking or resting on the reestablishment of pro forma estates.

MR. HENES: I'm sorry, I'm just laughing at the -- I'm listening to the whispers in the back. Yes, if you want --

THE COURT: Okay.

MR. HENES: Thank you, Your Honor.

THE COURT: Sure.

MR. HENES: I'm going to sit, and I'm going to leave soon.

THE COURT: That's fine, that's fine. That's fine. I also neglected to note before that, Mr. Herman is on the phone, on a live phone, in case Mr. Silverman wants to use a, what did you used to call those things?

MAN: When you call when you (indiscernible)

THE COURT: A lifeline, a lifeline. Right, right.

MAN 2: I'm afraid my lifeline is almost over, but he'll have to trust me.

THE COURT: Does he have to go at 11:00 as well?

MR. HERMAN: I do, Your Honor, thank you.

THE COURT: At 11:00, Mr. Herman?

MR. HERMAN: Yes.

MR. HENES: We're not going to the same place.

MR. HERMAN: I talked with Mr. Silver (indiscernible) in court today.

MR. HENES: Mr. Herman is out of town for an unexpected hearing, and he can't throw pencils at my back now, but I have other people who can, so if I mess it up. Thank you, Your Honor.

THE COURT: Alright, so who wants to talk now, besides Mr. Golden?

MAN: I'm ready --

THE COURT: Mr. Silverman, I think you've been waiting patiently.

MR. SILVERMAN: Your Honor, sure, I'd rather respond to whoever is attacking my motion, but I'm happy to go now, if you'd like.

THE COURT: Okay, I confess, I'm confused. Mr. Golden, you do indeed want to say something?

MR. GOLDEN: Yes, Your Honor.

THE COURT: Okay.

MR. GOLDEN: Thank you, Your Honor, Daniel Golden, agent from Strauss, Huer & Feld, counsel for Bank of New York. I rise not so much to attack the motion, per se, but to attack the process we find ourselves in right now in connection with the Debtor's complaint and the second lien's motion to dismiss. Your Honor may recall that in previous chamb -- we did not file a formal intervention motion, but as Your Honor mentioned, formal intervention wasn't necessary, and specifically the order authorizing the intervention of the committee, and the Forest notes indentured trustee had, as its last ordered paragraph, that this order shall be without prejudice to the rights of Bank of New York Mellon Trust Company, and A, defined as the Sabine notes trustee, to be heard at the hearing, and so I'll be heard at the hearing, briefly. Your Honor, I think

you've gotten a little bit of the color this morning from the bank and forth between Mr. Henes and Mr. Martin about the procedural complexity that we find ourselves in.

THE COURT: I just want -- I guess preemptively, defend myself on the question of what we're doing here today, which was in my mind, simply an attempt to allow -- I didn't want to have the committee heard at the earlier phase, but I did want to put the committee in the position of having standing, if you will, or being fully part of the process?

MR. GOLDEN: Your Honor, I don't think you need to defend yourself, because I think that was an entirely appropriate viewpoint, especially given the posture we're in. The committee, as Your Honor well knows, has filed two STN motions. One of which, the constructive fraudulent conveyance STN motion completely subsumes the relief that the Debtor is seeking and more.

THE COURT: Yes, you're absolutely right.

MR. GOLDEN: Part of why I think this is the right result at the conclusion of today is for the Court either to defer ruling on the motion, pending the mediation, and pending the hearing on the committee's two STN motions, or alternatively, simply denying the motion without prejudice, with the party's rights to reengage. It is because this is incomplete relief. You've heard a lot of argument about the

Debtor says, "Well, we're only seeking to avoid the (indiscernible) of the second lien lenders, with respect to the Forest assets."

The committee says that's not the right approach. The right approach would have been to avoid the claims, and if successful, the liens would fall by themselves. What's so curious about this, given our current factual posture, it that he relief that the Debtor is seeking in their adversary proceeding has already occurred. There are no liens, with respect to -- the second lien lenders have no liens with respect to the Forest asset, not because there's been an adjudication of the Debtor's complaint, but because of factual circumstances. The Debtors concede that. I don't think the second lien lenders dispute that. So if that's the fact, why then go forward with this adversary proceeding? Because the only real effect of this adversary proceeding is going to cloud the issues raised in the committee's second STN motions. The --

THE COURT: When you say there are no liens, you mean because of the merger?

MR. GOLDEN: No, there are no liens because there is no value to the collateral. I'm sorry, I should have been clear. So the Debtors are seeking an adjudication to avoid the liens, so that the second lien lenders have no secured claims against the Forest --

THE COURT: Rights to here are liens, but there are no secured claims, is what you're saying, right?

MR. GOLDEN: It has the same practical effect.

THE COURT: Same practical effect, right.

MR. GOLDEN: And give that we have the same practical --

THE COURT: I mean, I'm not agreeing that that's, in fact, the economic realty. Just the structure.

MR. GOLDEN: Nobody here in this courtroom is disputing that fact.

THE COURT: Well, when Mr. Herman was here last time, he put his two cents in that he wasn't conceding that, so --

MR. GOLDEN: I guess we'll find out whether the second lien lenders are actually disputing the effect, as of right now.

THE COURT: Well, look. I'm going to take you up on that. Because I've got other things I could be doing than deciding something --

MR. GOLDEN: And we wish you would be doing those other things.

THE COURT: But last time, I distinctly remember Mr. Herman was sitting over there, and he made it clear that the second lien lenders were not conceding that they were out of the money, so.

MR. GOLDEN: Fair enough, Your Honor. Your Honor, in response to a question Mr. Henes has said, if I'm right -- if I'm right, I'm not asking the second lien lenders to concede that fact. If I'm right, that there is not value to those punitive liens, why are the Debtors persisting in going forward with their adversary proceeding, in light of the fact that the mediation is about to occur, and in light of the fact that the STN motions are scheduled to occur on --

THE COURT: February 8th.

MR. GOLDEN: February 8th. And part of the relief that the committee's seeking is completely subsumed, as they said, by their STN motions. And Mr. Henes has said -- because we've asked Mr. Henes that question quite a few times. And Mr. Henes now tells the Court, "Well, it will give us guidance. If we win, we know --" Because they're still trying to formulate a plan, presumably. "It will give us guidance, because if they win, and the second lien lenders don't have liens, that will be appropriately portrayed in the plan that they're trying to formulate."

THE COURT: But this is just a motion to dismiss, right?

MR. GOLDEN: But the question I'm raising is, why is the Debtor persisting in the relief they are seeking? The second lien lenders, I know why they're moving to

dismiss the complaint, but I think the real question is, why are the Debtors --

THE COURT: Well, but let me try to do some of the game theory here, right? If I were to say today, motion to dismiss denied, right? And Mr. Henes takes that to mediation and plan negotiations, saying that the Debtors get to go forward with that claim. So it gives them that piece of leverage. When combined with your observation about the lack of value, would create a certain negotiating environment.

MR. GOLDEN: And all I'm saying is, I don't think they need that leverage, in light of the fact that there is not a value attended to those liens. So there's something else going on here, that's not exactly--

THE COURT: What is going on? Because I have spent a lot of hours trying to figure out what that is. So maybe today's not the time or the place. Maybe the mediation is the time or the place, but I think part of the difficulty here is my inability to understand what else, if anything, is going on. So feel free to not answer that question.

MR. GOLDEN: I typically don't feel restrained, especially when the Court is asking a direct question, but I'm trying to be --

THE COURT: Constructive.

MR. GOLDEN: Constructive here. I think mediation would be the place to answer that question, in the first instance. But suffice to say, we think there is more than meets the eye, as to the rationale as to why the Debtors are persisting with this adversary proceeding.

THE COURT: I mean, it goes without saying, it's in the order, and those of you who've been around here hopefully know it to be true, but I'm very happy about the participating of Judge Gropper in the process, and both in terms of his incredible knowledge of the law in the area, and also his understanding of these types of situations, and frankly his understanding of all of you. And you should be absolutely assured that he will not even tell me what time of day it is. There will be an absolutely no-fly zone between Judge Gropper and me, and I just want to -- I know you all know that, but I just want to make that 1000 percent crystal clear, to encourage as much candidness with him as possible.

MR. GOLDEN: And I don't think anyone misapprehended that fact, Your Honor.

THE COURT: So your ask of me today is, do nothing?

MR. GOLDEN: Do nothing, to either defer ruling on the motion, pending the completion of the mediation and the commencement of the STN motions. It could be rehearsed or

scheduled for, concurrently with the STN motion. Or if you felt constrained to rule, we've asked the Court to deny the motion without prejudice, to the rights of the second liens, to bring that motion again. We think any other action is going to tilt the playing field right before we get to mediation, right before the STN motions are to be heard.

It can't be lost on the Court that the relief sought by the committee in their STN motions, when I say subsumed, I mean it's the committee's theory, not necessarily Bank of New York's theory, it's the committee's theory that with respect to the second liens, as Mr. Martin has explained, that both the claim and the lien must fall, vis-a-vis the legacy Forest estate. The relief sought by the Debtors is a parcel of that, and I think in fairness, to allow these issues to be fully explicated, any ruling should await the mediation, because hope springs eternal. Maybe these issues can be resolved, and if not, the committee, we think, of which BNY is a member, deserves their shot in trying to convince the Court that it should have the authority to prosecute these actions, one of which is obviously implicated by their STN motions. Thank you.

THE COURT: Okay, thank you very much. Okay, anyone else on that side of things? Okay, Mr. Silverman.

MR. SILVERMAN: Moses Silverman, Paul, Weiss, Rifkind, Wharton & Garrison, representing defendant

Wilmington Trust, a successor, administrative agent under the second lien credit agreement. Good morning, Your Honor. I would like it, if I could, to address some of the substantive issues first, and then talk about procedure, and where we are. And I'd like to start by going back to where we are, and what Your Honor said was the purpose of today's, the discussion other than requirements, or to read Allegany again. And that was to allow the creditor's committee to express its views, and anyone else who chose to, on our motion to dismiss the complaint.

The complaint does not challenge our claim, the complaint just challenges our lien, as the Court knows. And the creditor's committee, and anyone else who has spoken today has offered no argument in favor of the Debtor's position, on our motion to dismiss the current complaint as written. In fact, the creditor's committee's brief begins on Page 1 by saying that the Debtor's complaint, and this is a quote, "Barely survives dismissal." And then they offer no reason why it survives dismissal at all, as written. In fact, they conceded in argument this morning that the liens were issued after the debt, and if the debt and claim are good, then the liens are good under the anteceding debt rule. So for purposes of the current record, the creditor's committee actually is on our side, that the complaint, at least as written, does not state a claim, and our motion

should be granted. Where of course, their position previously.

THE COURT: Well, they hedged that position by invoking the conform the pleadings to the proof kind of concept.

MR. SILVERMAN: Sure. And of course they make another argument, and of course, which is the heart of their argument, which is that the claim is no good. And of course, if the claim is no good, then the liens are no good. I get that. The first point I want to make about that, is that I think it's appropriate for the Court, should you choose to do so, to rule on the complaint as the Debtor has chosen to direct. The Debtor did an extensive investigation before this proceeding was filed, and before the lawsuit was filed, and they determined independently that they had a challenge to our lien, but not a challenge to a claim. There was a report issue, which the Court referred to, which although it said a number of different things, clearly confirmed the conclusion of the Debtors to not challenge our claim, and Your Honor read part of it, on Page 147 it says, "However, I have uncovered no facts and circumstances at this time that would support the conclusion that the second lien debt deficiency claim is void, if the deficiency claim is not void, nor is any part of our claim."

I think the Court should, should you choose to do

so, rule on the motion as it stands for two reasons. First of all, I think the Debtor's decision to draft the complain the way they did after considerable investigation is entitled to deference. And secondly -- and I'll talk about this in a little more detail, if the Court would like -- we think the challenge to the claim itself makes no sense at all. And I think the Court can dismiss it based on the pleadings you've gotten so far, which include the pleading --

THE COURT: But then you're saying that I should -- so if I were to grant the motion, you're saying do it with prejudice, and not only do it with prejudice, but I should deny the committee's STN motion to seek the claim avoidance.

MR. SILVERMAN: I think you have enough before you now to reach that decision. Now in fact, we will be filing another brief next week, in accordance to the schedule, which will be getting into more detail. And again, I don't mean to presume to tell the Court in what order you should do things. What I'm saying is --

THE COURT: But that would be pretty extraordinary, right -- to upset the usual apple cart of --

MR. SILVERMAN: I wasn't expecting a ruling from the bench. What I would like to explain -- why we think you have enough matter to understand why this claim makes no sense. First of all, just let's step back for a minute and

think of what the claim is.

The claim isn't just about the second lien debtholders. The claim is about all creditors of Sabine, pre-merger. This hearing is that every creditors' claim no longer exists. We're not special under their theory. Indeed, that includes all of the members and constituents of the creditors' committee who are Sabine creditors. All of those claims are wiped out, they say.

Now as to us --

THE COURT: Time-out.

MR. SILVERMAN: Sure.

THE COURT: You're saying that you believe that the committee is seeking to avoid all of the claims asserted, all of the Legacy Sabine claims?

MR. SILVERMAN: I'm saying that is their theory. What exactly -- which ones they want to choose to challenge, I'm not speaking to. But page 11 of their opposition, is clear. It says the relatively little value -- oh, I'm sorry. Thus relatively little value was provided to Legacy Forest in combination in exchange, with the assumption of Legacy Sabine's debt. Their theory that whatever debt came with Sabine, Forest didn't get --

THE COURT: Fair value.

MR. SILVERMAN: -- fair value for it, is relevant to all of the claims. It's not just the second lien

debtors' claims. What they choose to bring an action for, I don't know. That's within their purview. But understanding their theory, nothing that Mr. Martin said was relevant directly or limited -- I'm sorry, relevant, yes, but not limited to the second lien lenders. It is all claims. The same theory --

Now let me just give you an example. I think Mr. Herman is no longer on the phone, so he won't enjoy that I'm quoting his example of how crazy that is. A worker, works for Legacy Sabine is paid once a month. The merger takes place in the middle of the pay period. He continues working. At the end of the pay period, he asks for his paycheck, and he's told, no, we're only paying for the time you worked for the combined company because whatever debt Legacy Sabine had to you, we Forest didn't get value. You don't get paid. That is their claim. And that makes no sense.

As applied to us, Your Honor, as you pointed out, it's undisputed that we lent $650 million back in 2012 and early 2013, cash money. There's no question that we gave value. The transaction was not a fraudulent conveyance at the time. No one claims it is.

THE COURT: Wait, wait, wait -- you mean at that time?

MR. SILVERMAN: At that time.

THE COURT: When you funded the loan.

MR. SILVERMAN: That's exactly right.

THE COURT: Got it, okay.

MR. SILVERMAN: I would take (indiscernible).

THE COURT: Okay.

MR. SILVERMAN: They say that the merger created the fraudulent conveyance. But the merger was a merger of two companies in which Legacy Sabine was subsumed in and became part of Forest, which then they confused things was called Sabine.

But it's exactly what Your Honor said. The assets and liabilities were put together and the new company -- the company is both companies. And that's clearly what the case law says. If it's not that, then since Legacy Sabine is gone, there is no creditor -- I'm sorry, there is no debtor that Legacy Sabine's debts could be paid by.

Now my friends talk about the subsidiaries. The purposes of the legal issue is irrelevant. It may be that some Legacy and Sabine creditors, including us, maybe not the poor worker class, but including us, also have claims against subsidiaries. That may be, and they're not challenging those. Thank you. But for purposes of -- what was it? Intellectual honesty? -- Understanding what the legal issue is we're talking about, that is irrelevant. Because we're talking about what the debts of Legacy Sabine

are. When Legacy Sabine is merged into Forest, Legacy Sabine ceases to exist.

And under my friend's theory, all of its obligations to everyone disappeared. Let me talk about a few of the arguments they make in favor of that.

THE COURT: Well, okay. Well, maybe Mr. Martin can address that. Maybe that's his problem, right? But I still go back to my visual.

MR. SILVERMAN: Mm hmm.

THE COURT: Right? I mean I'm not and never was a corporate lawyer, but we're all kind of coalescing around, I think, the view that although it's a combined company, it was Forest that -- to the extent that there's a surviving company, it's Forest.

MR. SILVERMAN: That's correct.

THE COURT: That was the whole MO, if you will, of the transaction because --

MR. SILVERMAN: That is correct.

THE COURT: -- to avoid the change of control. Right?

MR. SILVERMAN: I believe that's correct, but in any event, certainly Forest is the surviving company.

THE COURT: Okay. So then, I'm in Hechinger, right? Because if Forest is the surviving company, and now the estate of Forest says it's fraudulent conveyance time

because when we sat down at that table, and we pushed everything into the middle, right -- all of our assets and all of our liabilities, and we took back 26 percent of the combined company --

MR. SILVERMAN: Right.

THE COURT: -- of the new and improved Forest, the way that you value that 26 percent is the assets and the liabilities. As a part of that, they incurred the obligations that they got out of the pot. So I think Mr. Martin has to address your interesting observation that basically it's all or nothing. Right?

But I still don't understand why there can't be a fraudulent conveyance, as a result of -- because that 26 percent does not reflect reasonably equivalent value for what Legacy Forest put in.

MR. SILVERMAN: It absolutely could be a fraudulent conveyance action, but not against the Legacy creditors. The fraudulent conveyance action in Hechinger wasn't against people who lent money to the merged company two years earlier. It was against the selling shareholders and the directors, and the banks that took fees out of the merger. That's who they sued for fraudulent conveyance.

That's the same thing in Allegheny. The lawsuit was against PH --

THE COURT: PT.

MR. SILVERMAN: Philadelphia Hospital or something.

THE COURT: Health something, yeah.

MR. SILVERMAN: It was the parent that sold its four hospital subsidiaries to Centennial. There can clearly be a fraudulent conveyance action against the seller of an insolvent company, or the people who took money out of the transaction for failure to get fair value.

As we discussed last time, there's a little complexity here because Forest didn't give cash. If Forest was giving cash, it would have a good fraudulent conveyance action, at least in theory, against the seller.

Here they gave stock to Forest, another insolvent company. That adds a layer of difficulty for them in this case. But conceptually, there clearly is a possibility of a fraudulent conveyance action against the party that gave you less than fair value. That's the seller of the company. It's not the lender, who two years earlier, lent cash and got cash. And Your Honor made exactly the right point of Allegheny when it talked about what time we look at. And in fact, there are a number of other cases you'll see in our brief you'll get next week, in which the question of what is the date of the claim for a company that's merged out of existence is relevant.

For example, a case against a prominent law firm

for alleged malpractice is brought. The firm had advised a company, more than six years earlier, that was merged out of existence. The new company, the combined company, like the combined company here says, ah, that obligation was just made when we created -- when we took over, and so that's when our statute of limitations runs -- the appellate division says not at all.

THE COURT: But let me go back.

MR. SILVERMAN: Sure.

THE COURT: Because I still like to look at things simply and try to get to the essence.

MR. SILVERMAN: Right.

THE COURT: When the dust cleared, and this goes to your point about well, how can you single us out? You have to -- Mr. Martin has to go after all Legacy Sabine debt. Right? But the fact is, when the dust cleared, your group was much better off than before, and --

MR. SILVERMAN: It's true...

THE COURT: So he's saying all good. You lent the money. We don't dispute that. You lent the money to the subs. You've got a good claim at the subs, but you just can't have a claim at the parent. Intellectually, that doesn't have anything to do with other Legacy Sabine creditors.

MR. SILVERMAN: It may or it may not. I think it

is true for certain Legacy Sabine creditors, who have guaranties and so forth. And it may not be for the employee of Legacy. But we're trying to understand what the law is. We have to answer the question -- not, do you have some other remedies, so maybe you're okay. So maybe it doesn't matter.

The question is, is there a fraudulent conveyance action as a matter of law because of the merger? What they focus on, Your Honor, is incurring an obligation. But to do that, we have to look at state law. And let me quote from Collier's on bankruptcy, Paragraph 548.034B. "An obligation is incurred when it becomes legally binding under applicable non-bankruptcy law."

The obligation to us became legally binding back when we gave the loans in 2012 and 2013. You look to non-bankruptcy law --

THE COURT: Only to your borrowers.

MR. SILVERMAN: And our borrower is now the new combined company. This isn't a matter of them buying a contract. This is a matter of a merger. And as we discussed last time, under New York law, the (indiscernible) section --

THE COURT: Under your construct then, to take a totally extreme example, and I think we had this colloquy last time. That as long as it's in the context of a merger,

there can never be a fraudulent conveyance.

MR. SILVERMAN: Absolutely not, Your Honor. For our loan, you look to when we gave the loan. We gave value, okay?

THE COURT: Right.

MR. SILVERMAN: Whether the transaction itself, by which Forest acquired and merged Sabine into it, that could be a fraudulent conveyance, but the transaction you'd be looking at, is the sale of Sabine to Forest.

THE COURT: Okay.

MR. SILVERMAN: We had nothing to do with that.

THE COURT: Okay.

MR. SILVERMAN: We had nothing to do with that.

THE COURT: But you benefited from it. You benefited by getting a lien, even though you had no one suggesting intent. You benefited from it.

MR. SILVERMAN: And that's correct.

THE COURT: And fraudulent conveyance law looks at who benefits from a fraudulent conveyance.

MR. SILVERMAN: Well, Your Honor, and the Ultr --

THE COURT: You benefited from it.

MR. SILVERMAN: In the Ultramar case the appellate division said "A conveyance which satisfies the antecedent date, made while the debtors are solvent, is neither fraudulent, nor otherwise improper, even if its effect is to

prefer one creditor over another. And that, as Your Honor pointed out, is a preference issue. It's not a fraudulent transfer issue.

And Your Honor, merger law and you look to non-bankruptcy law, makes clear that Legacy Sabine is the new company, the same as Forest. 906(b)(3) of the New York BCL, "The surviving or consolidated corporation shall assume and be liable for all liabilities, obligations, and penalties of each of the constituent entities."

And there's a legion of cases. And we get into this in more detail in the brief you're going to get next week, which explained why that is. This is not a matter of trying -- they talk about us trying to cleanse a transaction or cleanse a fraudulent conveyance. We're not seeking to cleanse a fraudulent -- there was no fraudulent conveyance when the loans were made. They say, well you could somehow structure transactions to avoid fraudulent -- I don't know what they're talking about.

What they're arguing is exactly that though. They're arguing you can structure a merger to wipe out all of the debt of the insolvent company that's merged into the acquiring company. And that is not what the law is. That's not what makes sense.

THE COURT: You're indicating that, you know, there are coming attractions. So that argues or supports

the notion that this should be deferred to another day.

MR. SILVERMAN: Your Honor, I didn't come here to tell you when to decide something. That's not my job. You will make your own decision on that. Let me though address that question this way.

First of all, I think you would be doing a tremendous service to every lawyer in this room, and lawyers around the country, if Your Honor wrote an opinion that could be looked to instead of Allegheny on the subject of the interface between fraudulent conveyance law and merger law. That would be something to which legions would be very grateful.

THE COURT: I'm not feeling gratitude for all the opinions that I wrote last year on Lehman and other things. So I don't know if that's going to be a motivation.

MR. SILVERMAN: Some people will like the results, and some people will not like the results.

THE COURT: Right.

MR. SILVERMAN: But the world would be a better place, if there was a clearer opinion than Allegheny. But as Mr. Golden pointed out, we have a mediation (indiscernible) --

THE COURT: Yes.

MR. SILVERMAN: -- in two weeks we have the hearing. My view was exactly the opposite of his. My view

is that if Your Honor were to decide some of these issues, it would very much help the mediation and perhaps shorten, or not the -- if a hearing is necessary on the standing motion. And help the parties and the Debtors understand where they are, or where they might be in negotiating plans. So I think -- again, I'm not here to tell the Court what to do when. But a decision would be very helpful in helping the parties understand where they are.

And it's not simply the question of our liens. I mean, just applied to us, the ruling also would go to the claims asserted against us under Section 550 with the alleged diminution of the value of the lien property. We think that claim is no good at all, even under any circumstances. But, of course, if our liens are good, then you don't get there. There are issues about adequate protection claims that relate to the liens. And that's just us. With respect to other parties, a ruling here can help influence everything, and can help get things resolved.

So we would ask the Court to rule on this motion, as soon as the Court feels it's appropriate and is ready to do so.

THE COURT: Okay, thank you.

MR. SILVERMAN: Thank you.

THE COURT: All right, Mr. Martin, we'll wrap up soon, but while I have you all here -- do you want to

address the -- and also Mr. Golden, if you would like to as well, all Sabine claims must fall argument that Mr. Silverman made or observation that he made?

MR. MARTIN: That's exactly correct in the spirit of not making us go back and forth too many times. I think that the point made is technically correct. That when those -- but it's going to be ameliorated by several factors. That is, if Legacy Sabine parent had had no assets, the old Sabine had no assets, and nothing happened other than obligations were incurred on the way we view it, every obligation, not just intellectually, but yes, they're all avoidable.

Now that's ameliorated by a couple of things. One, as I spoke earlier, Section 548(c) will get credit for what the actual assets were that were coming in, to the extent folks were in good faith. And I suspect --

THE COURT: And that's available pro-rata to everybody?

MR. MARTIN: It would be available pro-rata to those who qualify in good faith. And the employees, of course, are not going to have -- at least most of the employees are not going to have knowledge.

THE COURT: Right, but what about the other Legacy Sabine creditors?

MR. MARTIN: The same -- if you had trade

creditors at the parent company, same situation, whatever those assets were. And we can test out the good faith, and we can see what order those rank in, and that will shake out into crediting that.

And that, by the way, leaves all of them in the position they would have been in anyway, exercising request to the assets that existed previously.

THE COURT: That's kind of the parallel to the fact the value was given at a point in time.

MR. MARTIN: That's correct. Second, there's a practicality in the world, right? Preferences can be sued for a dollar, for ten dollars, for a hundred dollars, for a thousand dollars, and estates do not bring all of those claims for any number of reasons -- cost effectiveness, not talking to Courts, not (indiscernible), all of those things. And so the notion to say that, well this means that the committee is coming after the employees next is not the case.

But let me give an example, which I do not believe is, at least to my knowledge, is the case here.

THE COURT: I would like to leave the employees out of it.

MR. MARTIN: Correct.

THE COURT: I mean, I think Mr. Silverman was using that, not inappropriately for illustrative purposes.

Let's leave the employees out of it, and if you want to talk about someone, you can talk about --

MR. MARTIN: Trade creditor.

THE COURT: Yeah.

MR. MARTIN: Could I imagine that there's some non-financial liability?

THE COURT: Well, the Sabine creditors on your committee, right?

MR. MARTIN: Okay. So let's discuss that. So it is absolutely the case, and we hear that, for example, folks think that the assumption of the Legacy Sabine unsecured debt is subject to the same principle. And there's not any secret that on the flip side, when this merger occurred, the Legacy Sabine subsidiaries, which have assets and will have recoveries, gave guaranties of the Forest (indiscernible), when those subsidiaries were insolvent.

And so, in the spirit that Mr. Golden raised of there being mediation, there is, and will be a discussion about that. We have equal numbers of both of those folks on a committee, and there's not a particular reason to start flinging around four more counts in what are already like STN motions. The fact that they're not there, doesn't mean that we're not aware of them. We have representation on the committee about that. We're happy to discuss it in mediation.

THE COURT: Right. I mean the committee --

MR. MARTIN: We're not trying to cherry pick in that sense.

THE COURT: Right, but the issue highlights yet another one of the many tensions in the case.

MR. MARTIN: That's correct.

THE COURT: And the Debtor has its share of tensions, and you have your share of tensions.

MR. MARTIN: That's correct. And one thing happens many times in committee rooms. People have talked about ResCap before. We sat on that committee. There were nine people, and everyone had a different view. And it all worked out at the end of the day in a mediation amongst themselves. Maybe that's right, but that was something that we decided did not need to be brought now. It's not something to challenge period, those issues. So there's enough going on in this case, as is. That's kind of our take on that. I don't really have any other points, Your Honor --

THE COURT: Okay.

MR. MARTIN: -- that I feel the need to raise. You've been more than generous with the Court's time already.

THE COURT: All right, let me ask for good order, Mr. Golden, do you have anything that you want to --

MR. GOLDEN: No, Your Honor.

THE COURT: Okay. Ms. Schonholtz?

MS. SCHONHOLTZ: Margo Schonholtz, Linklaters for Wells Fargo. In the exercise of judgment, Your Honor, I'm not going to wade into these waters today. But I do need to state for the record that we're not responding intentionally today to a lot of the arguments. Particularly, where they were part of the RBL facility, or the ability to unscramble these mistakes. Suffice it to say that my silence on these issues today is not assent or agreement with anything that's been urged here.

But one thing is really clear. And Your Honor asked the question, what's going on here? This case cannot for much longer, be held hostage to the UCC or frankly anybody else's litigation strategy. We have to someway, somehow soon find a path to start clearing some of this, so that hopefully we'll get to a plan. Thank you, Your Honor.

THE COURT: Okay. As I said to Mr. Golden, when he initially started to speak, the primary purpose of today was to level the procedural playing field, if you will, and allow the committee its full opportunity to be heard with respect to the Motion to Dismiss.

The secondary purpose of today was to give me another opportunity to hear from all of you because with the degree of difficulty of these issues, it did help me.

Third, I was predisposed, even before today's very helpful discussions, to make clear that I intended to defer ruling on the motion. And what I would say -- and this is mostly directed toward Mr. Silverman, since it's in rejection of his view, is that this is a large contentious bankruptcy case. And I do believe that I need to take -- the best approach is a wholistic approach. And I do believe that it would unwisely -- well, let me put it this way. I don't believe there's a basis for granting a motion and dismissing the complaint with prejudice. Indeed, I don't even know what that would mean, given how everybody has pointed out the limits of the complaint.

So that would just get us to the STN motions which are on for hearing in February. So I feel that we're getting to the same place anyway because I would not have a basis to dismiss with prejudice and go the step further of saying, you know, no claims in any way, shape, or form. I think that would be outside the bounds of the record that I have before me.

Most importantly though, we have the mediation, and we're going to have the full briefing on the STN motions. And I'm assuming that you'll have a very productive week with Judge (indiscernible). That we'll go forward with the STN as scheduled or not. I think the "not" is only if everybody largely agrees that there's a high

probability of a settlement. But I believed -- I was predisposed before today, and I'm convinced today, and I'm telling you that I intend to defer ruling on the motion until after the conduct of the STN trial. So I'm giving you clarity to that extent.

And that's where I'm going to leave it. So I'm going to have most of you, if not all of you, back again tomorrow. All right, thank you very much.

* * * * *

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o=Veritext, ou, email=digital@veritext.com, c=US
Date: 2016.01.13 15:36:23 -05'00'

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: January 12, 2016